

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SANTOS ESPINOZA JR.	§	
v.	§	CIVIL ACTION NO. 6:08cv92
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Santos Espinoza, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Espinoza challenges a conviction for possession of a controlled substance in a penal institution, to which he pleaded guilty on November 29, 2006. Espinoza did not take a direct appeal, but filed an application for habeas corpus relief in state court on December 7, 2007. This state habeas application was denied by the Texas Court of Criminal Appeals on January 30, 2008. He signed his federal habeas corpus petition on February 29, 2008.

The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent filed a motion to dismiss arguing that the statute of limitations had expired on Espinoza's claims. Espinoza did not file a response to the motion to dismiss.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion to dismiss be granted and that the petition be dismissed with prejudice. The Magistrate Judge also recommended that Espinoza be denied a certificate of appealability *sua sponte*. Espinoza received a copy of the Magistrate Judge's Report on February 23, 2009, but filed no objections

thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice because of the expiration of the statute of limitations. It is further

ORDERED that the Petitioner Santos Espinoza is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So ORDERED and SIGNED this 8th day of April, 2009.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE